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Shirley Vigil

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EXAMINER

JARRETT, SCOTT L

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/735,044	Applicant(s) VIGIL, SHIRLEY	
	Examiner SCOTT L. JARRETT	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/11/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Non-Final Office Action is in response to Applicant's amendments filed March 9, 2009. Applicant's amendment amended claims 1-20. Currently claims 1-20 are pending.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 9, 2009 has been entered.

Response to Amendment

3. The 35 U.S.C. 112(2) rejection of claims 1-20 in the previous office action is withdrawn in response to Applicant's amendments to claims 1-20.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Response to Arguments

4. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's argument that the prior art of record fails to teach one or more features of the claimed invention, specifically that the prior art of record fails to teach or suggest generating a roadmap (Last Paragraph, Page 14), the examiner respectfully disagrees.

Initially it is noted that nowhere in Applicant's disclosure is a definition or concrete example provided for the phrase 'roadmap.' While the phrase is used in several paragraphs, including 4, 5, and 41 no clear definition is provided for the phrase. Therefore the undefined phrase has been given its broadest reasonable interpretation in light of the specification and knowledge of those skilled in the art at the time of the invention.

For the purposes of examination the phrase 'roadmap' has been interpreted to include any of the following: a plan, a program, a document, a map, a path, guideline, or the like. If applicant's intend the phrase 'roadmap' to be given a meaning other than its well known and accepted meaning then examiner requests applicant's clearly show wherein in the disclosure that meaning is clearly defined and further where in the disclosure teaches one skilled in the art at the time of invention how to generate a roadmap as claimed.

Michaels teaches generating a roadmap (Steps 4-6, Page 59; Last Two Bullets, Page 62).

Nation et al. teach generating a roadmap (Paragraphs 24, 95, 104, 130, 144-145).

In response to Applicant's arguments that the prior art of record, specifically Nation et al., fails to teach or suggest ranking individuals (employees) amongst one another (Last Two Paragraphs, Page 14), the examiner respectfully disagrees.

Nation et al. teach a system and method for providing a disciplined approach for conducting business management activities further comprising ranking individual amongst one another based on observable behaviors (i.e. skills/competency levels)

- "*compare such members* (e.g., to **rank members** having a specified current skill level of a competency based on the length of time that they have had that skill level and/or on the basis for their achieving of that skill level)." – Paragraph 24, emphasis added (note skills/competency levels are observable behaviors not employee preferences as the Applicant argues);
- Ranking competency gaps (i.e. training needs/requirements) for individual employees in order to determine which training (competency gaps) should be addressed first, Paragraphs 85, 87;
- Ranking employees based on a selected field (preference information) which includes any competency/skill level (i.e. observable behaviors) for

the express purpose of ranking employees amongst one another -
"specify two or more employees to be compared to each other.",

Paragraphs 144-145;

conducted as an initial screening to identify training requirements (i.e. competency gaps) and creating an action plan (Paragraphs 24, 95, 104, 130, 144, 145; Figure 10B); wherein training the individuals includes linking a corresponding training program (action plan, career path, roadmap, course, etc.) with the individuals in response to the initial screening (linking competency gaps with personalized learning recommendations; Paragraphs 25-26, 73, 86-68, 88-90; Figures 5A-5C, 7A-7D), the action plan including detailed action items (e.g. course to take) and metrics (level of skill/competency required for the next position on the employees career path) that guide the individuals through the roadmap (Figure 7B: "My Current Competency Gaps" – "Planned Date of Accomplishment", "Target Skill Level"; Figure 7C, "My Planned Competencies", "Planned Basis of Accomplishment" – which provides list courses to take (i.e. action items), "Planned Skill Level" "Required Skill Level" which are metrics to be achieved, Figures 7A & 7B "My Recommend Learning". "Training Catalog" – which are detailed action items; Figure 8D clearly shows the skills, action need to progress from one work position to the next position type; Figure 8E – "Action Plan Screen" - clearly shows the timing and nature of the courses (action items) to be taken which guide the employee from their current position to one or more future positions – i.e. a road map).

Further it is noted that ranking individuals (employees, workers, staff, agents, etc.) amongst one another based on observable skills is old and very well known as evidenced by at least the following references:

- Ibarra, U.S. Patent No. 6,119,097 (Column 1, Lines 15-25);
- Mizrahi et al., U.S. Patent No. 7,092,821 (Column 8, Lines 28-42); and
- Fung et al., U.S. Patent No. 7,483,842 (Column 2, Lines 40-53; Column 5, Lines 10-28, 35-55, 60-68; Column 8, Lines 21-55; Column 9, Lines 5-18, 49-60; Column 10, Lines 17-20; Claims 1, 29, 44) wherein Fung et al. further, in the above passages, identifying training requirements and creating an action plan including detailed action items and metrics that guide the individuals through the required training.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., generating a roadmap based on a number of different factors from groups of individuals; Last Paragraph, Page 14, Paragraph 1, Page 15) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's Applicant(s) attempt at traversing the Official Notice findings as stated in the previous Office Action (Remarks Pages 7-8) is inadequate. Adequate traversal is a two step process. First, Applicant(s) must state their traversal

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on the record. Second and in accordance with 37 C.F.R. 1.111(b) which requires Applicant(s) to specifically point out the supposed errors in the Office Action, Applicant(s) must state why the Official Notice statement(s) are not to be considered common knowledge or well known in the art.

In this application, while Applicant(s) have clearly met step (1), Applicant(s) have failed step (2) since they have failed to argue why the Official Notice statement(s) are not to be considered common knowledge or well known in the art. Because Applicant(s)' traversal is inadequate, the Official Notice statement(s) are taken to be admitted as prior art. See MPEP 2144.03.

According the officially cited facts in the previous office action(s) as presented are herein after prior art. Specifically it has been established that it was old and well known in the art at the time of the invention to forecast resource (human, non-human, etc.) requirements based on observed/collected work performance/activity data (e.g. comparing actual to planned resources observed; Specification: Figure 8, Paragraph 50) is old and very well known in workforce planning/scheduling and management control systems (see at least Horney, Implementing a Management Control System, 1984, Abstract) wherein historical and/or real-time work activity/performance data enables businesses to more accurately plan future resource requirements based on observed data (facts) determining such things as the level of staffing required (number, skill set, hire/fire, etc.), the need for overtime and the like.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)).

A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claims 1-8 fail to meet the above requirements because they are not tied to another statutory class of invention.

Nominal recitations of structure in an otherwise ineligible method fail to make the method a statutory process. See *Benson*, 409 U.S. at 71-72. As *Comiskey* recognized, "the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter." *Comiskey*, 499 F.3d at 1380 (citing *In re Grams*, 888 F.2d 835, 839-40 (Fed. Cir.1989)). Incidental physical

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limitations, such as data gathering, field of use limitations, and post-solution activity are not enough to convert an abstract idea into a statutory process. In other words, nominal or token recitations of structure in a method claim do not convert an otherwise ineligible claim into an eligible one.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711.

Regarding Claims 1, 9 and 17 Michaels teaches a system and method for providing a disciplined approach for conducting business management activities comprising:

- developing an activity list of tasks and behaviors that relate to an identified opportunity (time studies, work sampling, etc.; Bullets 1-2, Page 58; Steps 1-3, Page 59; “Use Of Flow Charts”, Page 62);
- performing a time study of observable behaviors associated with the activity (“Time Studies”, Page 56; Last Paragraph, Page 57; Bullets 2-3, 4, Page 58; Step 3, Page 59);
- collecting data resulting from the time study (“Time Studies”, Page 56; Last Paragraph, Page 57; Bullets 2-3, 4, Page 58; Step 3, Page 59);
- collecting data resulting from performance of work activities (“Time Studies”, Page 56; Last Paragraph, Page 57; Bullets 2-3, 4, Page 58; Step 3, Page 59);

- identifying issues presented as a result of analyzing (Bullet 6, Page 58; Paragraph 4, Page 58; Steps 4-6, Page 59; Paragraph 6, Page 61; Last Bullet, Page 62);
- generating and implementing a roadmap (plan, process, approach, strategy, model, program, curriculum, etc.) for resolving issues (e.g. new/revised process; Steps 4-6, Page 59; Last Two Bullets, Page 62);
- training individuals affected by the roadmap in accordance with action items contained in the roadmap (e.g. performance feedback; Paragraph 5, Page 62; Bullets 1-2, page 63); and
- updating resource schedules and allocation (e.g. balancing workloads; Last Bullet, Page 55; Bullet 1, Page 56; Bullet 1, Page 62).

Michaels does not expressly teach that generating a roadmap includes ranking individuals amongst one another based upon observable behaviors conducted in an initial screening (testing, evaluation, observation, assessment, etc.) to identify training requirements; or that training the individuals includes linking a corresponding training program with the individuals in response to the initial screening as claimed.

Nation et al. teaches generating a roadmap (action plan, career path, training course, program, curriculum, etc.; Figure 8E) includes ranking individuals amongst one another based upon observable behaviors (Paragraphs 24, 85, 87, 144, 145) conducted in an initial screening (testing, evaluation, observation, assessment, etc.) to identify

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training requirements and creating an action plan (Paragraphs 24, 95, 104, 130, 144, 145; Figure 10B); wherein training the individuals includes linking a corresponding training program (action plan, career path, roadmap, course, etc.) with the individuals in response to the initial screening (linking competency gaps with personalized learning recommendations; Paragraphs 25-26, 73, 86-68, 88-90; Figures 5A-5C, 7A-7D), the action plan including detailed action items (e.g. training to take) and metrics (level of skill/competency required for the next position on the employees career path) that guide the individuals through the roadmap (Figure 7B: "My Current Competency Gaps" – "Planned Date of Accomplishment", "Target Skill Level"; Figure 7C, "My Planned Competencies", "Planned Basis of Accomplishment" – which provides list courses to take (i.e. action items), "Planned Skill Level" "Required Skill Level" which are metrics to be achieved, Figures 7A & 7B "My Recommend Learning". "Training Catalog" – which are detailed action items; Figure 8D clearly shows the skills, action need to progress from one work position to the next position type) in an analogous art of training individuals for the purpose of providing personalized training to address identified competency gaps for individuals as well as groups of individuals (Paragraphs 85) and/or enabling individuals to manage their career path (Paragraph 95).

Example Employee ZZ Personalized Learning Scheduling Update

My Current Competency Gaps

557 559

Competency Name	Parent Competency	Competency Category	Current Skill Level	Target Skill Level	Skill Gap Value	Planned Date Of Accomplishment	Criticality	Source
B.S. Degree	Education	Credentials	-	-	-	-	High	Current Work Position
C++ Skills	Progr. Skills	Skills	Intermediate	Expert	5	10/31/XX	Medium	Performance Goal

My Planned Competencies

Competency Name	Parent Competency	Competency Category	Planned Skill Level	Required Skill Level	Planned Date Of Accomplishment	Planned Basis Of Accomplishment	Competency Description
C++ Skills	Progr. Skills	Skills	Expert	Expert	10/31/XX	Course Completion - Web-based, Third-Party + Supervisor Validation	C++ Programming

Fig. 7C

Example Future Career Path Management - Competencies Comparison Screen

My Current Competencies

Competency Name	Parent Competency	Competency Category	Current Skill Level	Competency Parameter	Date Of Accomplishment	Criticality
C++ Skills	Progr. Skills	Tech. Skills	Intermediate	-	06/15/XX	Medium
A.A. Degree	Education	Credentials	-	Computer Studies	02/01/XY	-

Competency Gaps For Starting Work Position Type: Intermediate Software Engineer

Competency Name	Parent Competency	Competency Category	Skill Level Rating System	Required Skill Level	Date Required	Preferred Skill Level	Criticality
B.S. Degree	Education	Credentials	-	-	Start Date	-	High

Competency Gaps For Intermediate Work Position Type: Senior Software Engineer - ABC Division

Competency Name	Parent Competency	Competency Category	Skill Level Rating System	Required Skill Level	Date Required	Preferred Skill Level	Criticality
B.S. Degree	Education	Credentials	-	-	Start Date	-	High
C++ Skills	Progr. Skills	Tech. Skills	N-I-E-G	Expert	Start Date	-	Medium

Competency Gaps For Target Work Position Type: Director Of Engineering

Competency Name	Parent Competency	Competency Category	Skill Level Rating System	Required Skill Level	Date Required	Preferred Skill Level	Criticality
M.S. Degree or M.B.A. Degree	Education	Credentials	-	-	Start Date	-	Medium

Fig. 8D

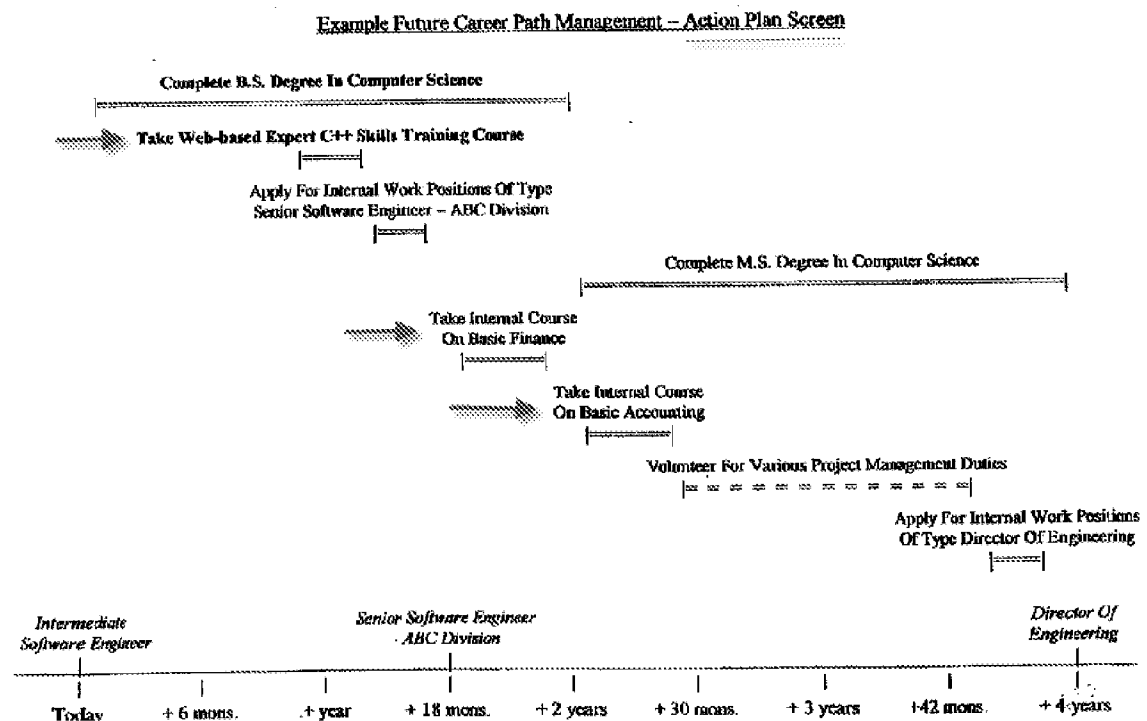


Fig. 8E

It would have been obvious to one skilled in the art at the time of the invention that the system and method as taught by Michaels would have benefited from ranking individuals amongst one another based upon observable behaviors conducted in an initial screening to identify training requirements and creating an action plan as well as linking a corresponding training program with the individuals in response to the initial screening in view of the teachings of Nation et al.; since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Neither Michaels nor Nation et al. expressly teach *forecasting future resource requirements* based upon reports generated as a result of the collecting data and identifying issues as claimed.

Official notice is taken that forecasting resource (human, non-human, etc.) requirements based on observed/collected work performance/activity data (e.g. comparing actual to planned resources observed; Specification: Figure 8, Paragraph 50) is old and very well known in workforce planning/scheduling and management control systems (see at least Horney, Implementing a Management Control System, 1984, Abstract) wherein historical and/or real-time work activity/performance data enables businesses to more accurately plan future resource requirements based on observed data (facts) determining such things as the level of staffing required (number, skill set, hire/fire, etc.), the need for overtime and the like.

It would have been obvious to one skilled in the art at the time of the invention that the business management system and method as taught by Michaels would have benefited from forecasting future resource requirements based upon reports generated as a result of the collecting data and identifying issues in view of the teachings of Official Notice; the resultant system/method enabling businesses forecast resource requirements based on observed/collected data, such forecast being more likely than estimates not based on historical and/or real time work performance/activity data.

Further since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Michaels is silent on the 'components' comprised in the business management system and method and does not specifically teach that the business management system and method further comprises a plurality of components (subsystems, subroutines, code, hardware, etc.) including plan, execute, report, follow-up, coach/train, forecast and sustain recited in claim 17; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific labels applied to the various system components. Further, the structural elements remain the same regardless of the specific labels applied to the various system components. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *MPEP* 2106.

9. Claims 2 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 as applied to claims 1 and 9 above, and further in view of Leehman, U.S. Patent Publication No. 2005/0043976.

Regarding Claims 2 and 10 Michaels teaches updating roadmaps (plans, processes, activities, etc.) upon notification of a compliance resulting from an activity assessment (Last Bullet, Page 55; Steps 5-6, Page 59; Paragraphs 2-3, Page 61).

Michaels does not expressly teach that the business management system and method further comprises updating a *database of roadmaps* upon notification of a compliance resulting from an activity assessment.

Leehman teaches updating a database of roadmaps (recommended process maps, best practices) upon notification of a compliance resulting from an activity assessment (Paragraphs 0019, 0023, 0035-0037) for the purposes of improving current roadmaps (processes, process maps) based on roadmaps stored in the roadmaps database (best practices database) in order to select the most cost effective process (roadmap) which meets the performance criteria (compliance requirements, Paragraph 0023, 0035).

More generally Leehman teaches a system and method for providing a disciplined approach for conducting business management activities comprising:

- developing an activity list of tasks and behaviors that related to an identified opportunity (Paragraph 0009, Figure 1);
- performing a time study of observable behaviors associated with the activity (Paragraphs 0018-0019);
- collecting data resulting from performance of work activities (Paragraphs 0018-0019);
- identifying issues presented as a result of analyzing the data (e.g. non-compliance; Paragraphs 0035-0037);
- generating and implementing a roadmap (process map, target process) for resolving issues (Paragraphs 0035);
- documenting current workflow (process) conditions and requirements (Paragraphs 0018-0019, 0023);
- identifying key volume/measurement indicators (key performance indicators, KPI; Paragraph 0018-0019, 0056-0075); and
- identifying activities and creating an activity list summary (Paragraphs 0019).

Leehman further teaches that the system and method for providing a disciplined approach for conducting business management activities includes the following system components (subsystems, subroutines, code, hardware, etc.) plan (research; Paragraph 0028; Figure 2), execute (startup; Paragraphs 0028-0029), report (Figures 4A, 4B), follow-up (Paragraphs 0034, 0037; Figures 4A, 4B), coach/train (Paragraphs 0034, 0037; Figures 4A, 4B), and sustain (Figures 3A, 3B).

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It would have been obvious to one skilled in the art at the time of the invention that the business management system and method as taught by Michaels with its ability to update roadmaps would have benefited from updating a roadmaps stored in a database in view of the teachings of Leehman; the resultant system/method enabling businesses to update current best practices (best roadmaps/process maps) in a database which are in turn the most cost effective roadmap is selected (Leehman: Paragraph 0023).

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10. Claims 3-4 11-12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 as applied to claims 1, 9 and 17 above, and further in view of Kaplan et al., Linking the Balanced Scorecard to Strategy (1996).

Regarding Claims 3 and 11 Michaels teaches a business management system and method further comprising establishing, documenting and communicating goals and objectives for exploiting the opportunity (Paragraph 6, Page 61; Paragraph 2, Page 62) as well as establishing, document and communicating objectives (approach, process, plan, technique, etc.; e.g. setting standards; Steps 5-6, Page 59; Paragraph 2, Page 62; Bullet 1, Page 63).

Michaels does not expressly teach establishing goals and *strategies* for exploiting the opportunity; documenting the goals and *strategies*; and communicating the goals and *strategies* to affected individuals as claimed.

Kaplan et al. teach establishing goals and strategies for exploiting the opportunity (Paragraphs 2-4, Page 56; Exhibits 1, 7; Last Two Paragraphs, Page 64); documenting the goals and strategies (Paragraphs 2-4, Page 56; Exhibits 1, 7; Last Two Paragraphs, Page 64); and communicating the goals and strategies to affected individuals (Paragraph 4, Page 66; Last Paragraph, Page 77) in an analogous art of conducting a disciplined approach to business management for the purpose of articulating,

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communicating the strategy of the business to affected individuals as well as linking the goals and strategies to key indicators/measures so that they can be managed (Paragraph 3, Page 56; Paragraphs 1-2, Page 68; Paragraph 3, Page 65).

It would have been obvious to one skilled in the art at the time of the invention that the business management system and method as taught by Michaels would have benefited from establishing, documenting and communicating the goals and strategies for exploiting an opportunity in view of the teachings of Kaplan et al.; the resultant system/method enabling business to align business activities with the goals and strategies of the business/organization by communicating those goals and strategies to affected individuals (Kaplan et al.: Paragraphs 1-2, Page 68).

Regarding Claims 4 and 12 Michaels teach a business management system and method further comprising developing an activity detail summary (report) comprising: documenting current workflow (process) conditions and requirements; identifying activities and creating an activity list summary ("Work Simplification", Page 59; "Measuring Management", Page 57; "Use of Flow Charts", Page 62).

Michaels further teaches the utilization of performance standards (Paragraphs 2-3, Page 57; Measuring Management, Page 57).

While the utilization of key indicators (measures, metrics, etc.; key performance indicators, key volume indicators, etc.) is old and very well known in business

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performance management and/or business performance benchmarking Michaels does not expressly teach identifying key volume or key measurement indicators as claimed.

Kaplan et al. teach using information from an activity list to develop an activity detail summary (balanced scorecard) comprising (Last Two Paragraphs, Page 64; Paragraphs 2-3, Page 66; Paragraphs 2-3, Page 69; Table on Page 76; Exhibits 1, 7, 8): documenting current workflow (business process) conditions and requirements (objectives, measures, targets); identifying key volume/measurement indicators (key performance indicators, generic measures, performance drivers; Paragraphs 2-3, Page 66); and identifying activities and creating an activity list summary (initiatives; Exhibits 1, 7, 8) in an analogous art of business management for the purpose of assist business in achieving their business strategy (Paragraph 3, Page 56; Paragraph 3, Page 65) by translating the strategy into operational measurements (key indicators; Paragraph 3, Page 77).

It would have been obvious to one skilled in the art at the time of the invention that the business management system and method as taught by Michaels would have benefited from identifying and summarizing key volume and measurement indicators in view of the teachings of Kaplan et al.; the resultant system/method assisting business in achieving their business strategy (Kaplan et al.: Paragraph 3, Page 56; Paragraph 3, Page 65) by translating the strategy into operational measurements (Kaplan et al.: Paragraph 3, Page 77).

Regarding Claim 18, claim 18 recites similar limitations to claims 3-4 and 11-12 and is therefore rejected using the same art and rationale as applied in the rejection of claims 3-4 and 11-12.

11. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 as applied to claims 1, 9 and 17 above, and further in view of Goodkovsky, U.S. Patent No. 6,807,535.

Regarding Claims 6 and 14 Michaels teaches a business management system and method wherein the key measurement indicators measure performance, service, quality and/or effectiveness of work performance quantifying results into relevant measurements (standards, productivity; Paragraph 2, Page 55; Paragraph 1, Page 56; Paragraph 2, Page 57).

Michaels does not expressly teach that training the training the individuals further comprises: evaluating the individuals to determine current skill levels and skills flexibility identifying relative strengths and weaknesses within a team of individuals from a training standpoint; and conducting a pre-training assessment to calibrate the skills of the individuals prior to training and conducting a post-training assessment to measure the skills retained by the individuals after conducting the training; wherein the pre-training and post-training assessments assess skills training needs for three skill areas

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including: basic skills that define foundational elements needed to perform a job;
fundamental skills that define an advanced set of skills for optimally performing a job;
and advanced skill areas that define unique or special skills to perform a job as claimed.

Nation et al. teach evaluating the individuals to determine current skill levels and skills flexibility identifying relative strengths and weaknesses within a team of individuals from a training standpoint (Paragraphs 27, 87, 97, 104, 113; Figures 5C, 9A-9D, 10B); and conducting a pre-training assessment to calibrate the skills of the individuals prior to training (current skills; Paragraphs 73, 82) and updating the measure the skills retained by the individuals after conducting the training (history of skill level; Paragraph 78, 83); wherein the training assessments (pre-training) assess skills training needs for several skill areas including required, preferred and critical skill areas (Paragraphs 75-77, 81, 85, 110, 112, 144).

It would have been obvious to one skilled in the art at the time of the invention that the system and method as taught by Michaels would have benefited from determining the skills levels/flexibility of individuals, identifying relative strengths and weaknesses within a team of individuals from a training standing and conducting pre-training assessments in view of the teachings of Nation et al., since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of

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ordinary skill in the art would have recognized that the results of the combination were predictable.

While the utilization of pre and post testing to assess individuals skills before and after training is old and very well known neither Michaels nor Nation et al. expressly teach conducting a *post-training* assessment to measure the skills retained by the individuals after conducting the training as claimed.

Goodkovsky teach conducting pre-training and post-training assessments assess skills training needs (Column 15, Lines 58-68; Column 17, Lines 10-35; Column 18, Lines 57-68; Column 19, Lines 1-18; Figures 5, 6) in an analogous art of training for the purpose of assuring that the learner has mastered all the knowledge/skills of the course unit (Column 18, Lines 57-59).

It would have been obvious to one skilled in the art at the time of the invention that the system and method as taught by the combination of Michaels and Nation et al., with its ability to pre-test individuals for skills/competency levels as well as update individuals skill/competency levels after the completion of training would have benefited from post-training assessments to measure the skills retained by individuals after conducting training in view of the teachings of Goodkovsky; since the claimed invention is merely a combination of old elements, and in the combination each element merely

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would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

It is noted that the labels used to describe the various skill areas (levels) merely represent non-functional descriptive materials (labels) merely represent non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific labels applied to the various system components. Further, the structural elements remain the same regardless of the specific labels applied to the various system components. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

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12. Claims 5 and 13 re rejected under 35 U.S.C. 103(a) as being unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 in view of Kaplan et al., Linking the Balanced Scorecard to Strategy (1996) as applied to claims 4 and 12 above, and further in view of Leehman, U.S. Patent Publication No. 2005/0043976.

Regarding Claims 5 and 13 Michaels teaches a business management system and method wherein like work units are compared using fair standards (Paragraph 2, Page 55; Number 2, Page 56).

Michaels does not expressly teach the utilization of the key volume indicators or that the indicators are derived by comparing like work units and validating differences between processes used in like work units; and establishing engineering service metrics and reasonable expectations resulting from comparing the like work units; wherein the metrics include best demonstrated practices for activities conducted in the work units.

Leehman teaches a business management system and method comprising key performance indicators (volume measures, metrics) comprising:

- comparing like work units and validating differences between processes used in like work units (Paragraph 0023); and

- establishing engineering service metrics and (reasonable) expectations resulting from comparing the like work units (performance criteria, KPIs; Paragraphs 0023-0024, 0035);

- wherein the metrics include best demonstrated practices for activities conducted in the work units (Paragraphs 0035-0037)

in an analogous art of business management for the purpose of selecting best practices based on the comparison key measures between current practices and best practices (Paragraph 0023).

It would have been obvious to one skilled in the art at the time of the invention that the business management system and method as taught by the combination of Michaels and Kaplan et al. with its ability to update roadmaps would have benefited from comparing like work units, establishing metrics/expectations from the comparison wherein the metrics include best methods/practices in view of the teachings of Leehman; the resultant system/method enabling businesses to select current best practices based on the comparison key measures between current practices and best practices (Leehman: Paragraph 0023).

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13. Claims 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaels, Edward, Work Measurement (1989) Nation et al. U.S. Patent Publication No. 2007/0203711 as applied to claims 1 and 9 above, and further in view of Denton, Keith D., Work sampling: Increasing Service and White Collar Productivity (1987).

Regarding Claims 7 and 15 Michaels teaches a business management system and method wherein the time study of observable behavior includes ("Time Studies", Page 56; Work Sampling, Last Paragraph, Page 57; "Measuring Management", Page 59): identifying behaviors to observe; observing the behaviors; defining metrics (standards) for the behaviors; documenting the observation (Bullets 2, 5, Page 58); and identifying issues resulting from the observations (Bullet 5, Page 58; Last Bullet, Page 62; Bullet 1, Page 63).

While determining the statistical validity of observations (sampling) is old and very well known Michaels does not expressly teach determining statistical validity of observations as claimed.

Denton teaches determining statistical validity of observations (Last Paragraph, Page 37; Table on Page 40) in an analogous art of business management for the purpose of ensure that the observations/measurements accurately reflect the observed activities/behaviors (Last Paragraph, page 37).

Denton further teaches a system and method for providing a disciplined approach for conducting business management activities comprising:

- performing a time study of observable behavior and collecting data resulting from performance and observations of the behavior (Paragraphs 2-4, Page 37; Last Two Paragraphs, Page 36);
- generating a tally sheet of detailed work volumes (Table on Page 37);
- capturing best methods/practices (Paragraph 5, Page 41);
- comparing like work units (Paragraph 1, Page 37); and
- establishing goals/objectives for key measures (Paragraph 2, page 39).

It would have been obvious to one skilled in the art at the time of the invention that the business management system and method as taught by Michaels would have benefited from the well known practice of determining the statistical validity of observations in view of the teachings of Wilde; the resultant system/method enabling businesses to ensure they have enough observations/measurements to accurately reflect the observed activities/behaviors (confidence level; Wilde: Last Paragraph, Page 37).

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14. Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 as applied to claims 1 and 9 above, and further in view of Wilde, Edwin, A performance control system (1993).

Regarding Claims 8 and 16 Michaels teaches a business management system and method wherein collecting data resulting from performance work activities includes generating a tally sheet (sheet, table, count, spreadsheet, etc.; log/historical records) of detailed work volume (Paragraph 2, Page 57; Last Three Paragraphs, Page 56) and updating schedules based on observed activities (Last Bullet, Page 55).

Michaels does not expressly teach creating a daily schedule control using the tally sheet, the daily schedule including: productivity, percentage overtime, earned hours and/or lost time data as claimed.

Wilde teaches creating a daily schedule control using the tally sheet, the daily schedule including: productivity, percentage overtime, earned hours and/or lost time data (Column 1, Page 227; Column 1, Page 228; Figures 2, 3, 4) in an analogous art of business management for the purpose of utilizing key indicators/measures to manage/control work activities (Column 1, Paragraph 1, Page 225; Column 2, Last Paragraph, Page 225; Column 1, Paragraph 3, Page 228).

Wilde further teaches a system and method for providing a disciplined approach for conducting business management comprising:

- developing an activity list of tasks and behaviors (Column 1, Paragraph 3, Page 228; Column 2, Last Paragraph, Page 226; Figures 2, 4);
- performing a time study of observable behaviors (Figures 2, 4);
- collecting data resulting from performance of work activities (Column 1, Paragraph 3, Page 228; Column 2, Last Paragraph, Page 226; Figures 1,2, 4)
- identifying issues presented as a result of analyzing the data (Column 1, Paragraph 3, Page 228; Column 2, Last Paragraph, Page 226; Figure 4); and
- establishing and communicating goals and targets for exploiting the opportunity (Column 1, Paragraphs 1-2, page 227; Column 2, Paragraph 2, Page 228; Figure 4).

It would have been obvious for one skilled in the art at the time of the invention that the business management system and method as taught by Michaels would have benefited from teach creating a daily schedule control using the tally sheet, the daily schedule including: productivity, percentage overtime, earned hours and/or lost time data in view of the teachings of Wilde; the resultant system/method enabling business to identify and resolve issues based on the analysis of collected observations of work performance activities (Wilde: Column 1, Paragraph 3, Page 228; Column 2, Paragraphs 4-5, Page 230).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Janovski et al., U.S. Patent No. 5,726,914, teach a system and method for providing a disciplined approach to conducting business management comprising collecting and analyzing observable behaviors of individuals including comparing individuals performance amongst one another with regards to the one or more observable behaviors (key volume metrics).

- McIlwaine et al., U.S. Patent No. 6,342,282, teaches a system and method for identifying training requirements and creating an action plan based upon observable behaviors wherein a training program for individuals is linked to an initial screening.

- Casey-Cholaskis et al., U.S. Patent No. 6,438,353, teaches a system and method for identifying training requirements and creating an action plan (training program) for a plurality of individuals.

- Orton et al., U.S. Patent NO. 6,994,624, teach a personalized training program system and method comprising identifying training requirements, based on observing behaviors of individuals, and creating an action plan (training program, roadmap, etc.) based on an initial screening wherein the action plan comprises detailed action items and metrics that guide individuals through the training program (roadmap).

- Frank et al., U.S. Patent No. 7,367,808, teach a system and method for collecting data regarding observable behaviors of individuals, identifying opportunities (areas/skills which can benefit from improvement) and generating and implementing a

roadmap for resolving the issues (training program, modules, etc.) wherein the roadmap/action plan includes detailed steps/action items and metrics that guide individuals through the road map.

- Delenhanty, U.S. Patent Publication No. 2001/0039002, teach a network based training program wherein individualized training programs (action plans) are provided to individuals based on observable behaviors.

- Bull, U.S. Patent Publication No. 2001/0008999, teach a system and method for performing a time study of observable behaviors associated with an activity/task.

- Margrino et al., U.S. Patent Publication No. 2002/0198765, teaches a human resource performance management system and method.

- Levin et al., U.S. Patent Publication No. 2003/0101091, teaches a system and method for identifying training requirements based on performance assessments, appraisals and objectives.

- Zwell, WO 01/25971A1, teaches a human resource management system and method comprising identifying training requirements and creating an action plan (competency based performance development system).

- Grant et al., Computerized Performance Monitors as Multidimensional Systems: Derivation and Application (1996), teaches a system and method for providing a disciplined approach for conducting business management activities comprising: developing an activity list of tasks and behaviors associated with the activity, performing and collecting data from a time study of observable behaviors associated with the activity, and identifying issues as a result of analyzing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT L. JARRETT whose telephone number is (571)272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Scott L Jarrett/
Primary Examiner, Art Unit 3624